RBI: Vodafone non-discrimination consultation
Summary of Submissions
April 2011

1. Provision of wholesale broadband services

Respondent	Submission	MED Comment
Kordia/CallPlus	EOI is required because: - non-discrimination is insufficient to prevent market failure; and - RBI-funding will come in part from access seekers	Non-discrimination is a proportionate and appropriate methodology given that Vodafone will face wholesale competition in many rural areas from DSL and fibre services, and in all rural areas from other fixed wireless access seekers. Non-discrimination better reflects the higher cost and implementation risks in non-urban areas while continuing to promote competition.
	There need to be further consultation on other details not considered in the consultation document, such as non-price KPIs.	An annual review process will allow MED to review KPIs on an on-going basis.
NZRFG	Vodafone will not be consuming the same service it provides to access seekers. The Bill's definition of non-discrimination means that this different treatment must be objectively justified and must not harm competition, Without knowing the precise retail margin involved in the retail minus mechanism (X%), it is not clear whether the different treatment will harm competition.	The Commerce Commission will set the retail margin with Vodafone to ensure workable competition.
V-SAT	There must be controls ensuring all providers can "implement their solutions" without time differences.	Provisions to this effect are included in the agreement with Vodafone.
	Penalties are required to ensure fair access is delivered.	A robust pecuniary penalties regime is included in the Telecommunications (TSO, Broadband, and Other Matters) Amendment Bill.
Federated Farmers	Pleased to see the involvement of the Commerce Commission in the enforcement of the obligations.	The Commerce Commission will be monitoring and enforcing the Vodafone undertakings.

Woosh	EOI is required in order to achieve total clarity, fairness and non-discrimination	Non-discrimination is a proportionate and appropriate methodology given that Vodafone will face wholesale competition in many rural areas from DSL and fibre services, and in all rural areas from other fixed wireless access seekers. Non-discrimination better reflects the higher cost and implementation risks in non-urban areas while continuing to promote competition.
	Vodafone will wholesale approved customer premises equipment (CPE) to retail service providers (RSPs) for them to supply to customers. How is the price of CPE calculated? What measures will be used to ensure that Vodafone doesn't use CPE pricing to gain a competitive advantage?	RSPs will be able to supply their own CPE to end users, or have access to Vodafone's bulk purchasing discounts. New models of CPE will need to be approved by Vodafone in order to update the Vodafone TAC locking on SIM cards.
	The retail price adjustment proposed (removing the retail price for bundled elements such as on-net voice calls) may not deliver an appropriate wholesale price. For example, the retail price of an on-net calling bundle may not be reflective of the true cost of that bundle or to a third party were it to create the same bundle. Therefore there is a risk that the RSP wholesale price (after deduction of Vodafone's proposed voice bundle cost) could be higher than the true internal cost to Vodafone Retail. This would mean that RSPs could not effectively compete with a bundled proposition in the market.	Wholesale price caps have been negotiated that will ensure RSPs are able to compete effectively with Vodafone Retail.
	Wonders what the document means by "deducting the costs of any international or national data that is sold as part of the bundle, where access seekers cover the costs of that data themselves as part of their service provision": - based on Mbps (pipe size) or MBs (data caps)? - what about national backhaul pricing? - shouldn't voice also be deducted? - is bundled CPE included? or is it an amortized derivative of the transfer price of CPE to RSPs deducted from the retail price as part of the wholesale transaction?	The Commerce Commission is competent in determining avoided costs. The Commission currently undertakes this process for the Unbundled Bitstream Access services provided by Telecom.

InternetNZ	EOI is required because:
	- breach of a non-discrimination standard is very hard to detect, particularly for non-price terms;
	- Vodafone Retail may:
	  - develop other products not available in wholesale form to access seekers;
	  - bundle fixed broadband services with mobile offerings.
		Non-discrimination is a proportionate and appropriate methodology given that Vodafone will face wholesale competition in many rural areas from DSL and fibre services, and in all rural areas from other fixed wireless access seekers. Non-discrimination better reflects the higher cost and implementation risks in non-urban areas while continuing to promote competition.

	If EOI is not to be provided, the service level regime should be strong and provided for consultation	MED is confident that it has negotiated a robust service level regime.
	If EOI is not to be provided, then the price squeeze mechanism needs to be changed. This is because, in its current form, the amount deducted from the Vodafone retail price is based on Vodafone's costs, not the access seeker's costs, so only an access seeker with similar or lower costs to Vodafone will be able to effectively compete. This model is "much maligned internationally and within New Zealand".	MED notes that an identical mechanism has functioned well in the fixed UBA market and the Ministry is confident that it will also function well for fixed wireless broadband by encouraging efficient entry and competition.
	It is not apparent why the UBA percentage margin is the right benchmark for wireless broadband	The UBA percentage is given as an example. It is up to the Commerce Commission to agree an appropriate percentage discount with Vodafone.
	The discount should be applied on a product-by-product basis, rather than on a weighted average of Vodafone's set of products.	A product-by-product approach would be disproportionately complex. MED is confident that a weighted average will permit workable competition in a timely and less complex manner.

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2. Provision of co-location services

Respondent	Submission	MED Comment
Kordia/CallPlus	Failure to provide the intermediate rungs of national roaming and antenna sharing (possibly based on Commission-determined pricing): - will substantially harm if not eliminate competition; and - is not fair, given that RBI-funding will come in part from access seekers. It is no defence that Vodafone will pay for its own RAN, given that the RAN operates off a heavily subsidised towers.	Mobile cellular services are not the main focus of the RBI. In addition, national roaming is already a 'specified service' under the Telecommunications Act and the Commerce Commission is free to re-investigate this market at any time. 2degrees recently requested that the Commission not investigate the national roaming market. Antennae sharing poses technical challenges including interference and reduction of the power available to each operator with consequential impact on coverage and quality of service. MED is not aware of antennae sharing having been widely mandated abroad. Operators remain free to explore both these options on a commercial basis
	The 380 legacy sites that will be upgraded must be addressed. There is nothing in the consultation about co-location on / access to them.	Vodafone will not be using any RBI funding in its upgrade of its 380 existing rural cellsites. The Commerce Commission will enforce the Standard Terms Determination for Co-Location on Cellular Mobile Transmission Sites on Vodafone's existing sites. It is therefore not appropriate for the Crown to mandate additional co-location requirements at those sites.

	Leaving landowner and RMA consent to extra height and additional kit (such as a second carousel) until after the initial build will make it difficult or impossible to achieve resolution.	Towers will be designed for the initially expected co-location demand. This is designed to incentivise early use of the co-location. The challenges of obtaining consent / authorisation for extensions that may never be used, as identified by 2degrees at para 2.23 of its submission, will significantly increase the risks of both costs overruns and delays.
	There should be the ability to have 4 (not just 3) mobile operators in the top two tiers of the tower.	The ability for a fourth entrant is available. They will have to pay to retro-fit the second carousel if they do not participate in the initial build programme
	The applicability of the mobile co-location standard terms determination ("STD") needs to be checked. For example, it excludes co-location on space required by the access provider over the following 3 years.	Provisions have been introduced to guard against anti-competitive use of reserved space.
	Vodafone must commit to best endeavours to seek solutions to RMA or landowner issues, including other locations.	Provisions have been introduced to this effect.
V-SAT	If delivered to the letter, the provisions are OK.	Noted.
	Questions who will have responsibility for the ongoing maintenance of the RBI-funded towers.	Vodafone will have maintenance responsibility.
Jonathan Brewer	There should be at least two headframes on every tower. This is because, when adding a headframe, the costs of obtaining a resource consent and landowner authorisation, and using a crane in a remote site, often exceed the costs of erecting a separate small tower, and so will deter potential access seekers from co-locating.	Towers will be designed for the initially expected co-location demand. This is designed to incentivise early use of the co-location. The challenges of obtaining consent / authorisation for extensions that may never be used, as identified by 2degrees at para 2.23 of its submission, will significantly increase the risks of both costs overruns and delays.
Federated Farmers	Recommends that MED consider taking steps to assist and support Vodafone in developing a national instrument / guidance under the RMA to promote the extension of tower heights in rural-zoned land.	MED will support Vodafone in its applications for resource consent, but at this stage does not envisage developing a national policy standard or a national environmental standard.

	Any contract between Vodafone and the landowner must specify the maximum design specifications, so that the landowner clearly knows in advance the potential impact on the property.	This is beyond the scope of the non-discrimination consultation. MED supports Federated Farmers promoting its land access toolkit to its members.
Woosh	Wants definitions for the terms used to refer to operators who co-locate. Document uses varying terms such as “operators”, “other operators”, “mobile cellular operators” and “co-location customers”.	Terms have been made consistent in the contract.
	Submits that any type of operator should be allowed to co-locate at the top two levels.	Any operator can locate on the top two levels of the tower and pay the same price as mobile operators.
	Price of co-location needs to be based on the LRIC of operating the tower.	Agree. No depreciation for grant funded assets will be allowable.
InternetNZ	Standard design models and RMA/landowner processes should be developed	No changes are proposed to the RMA. Land owners are recommended to refer to the Federated Farmers Land Access toolkit. Tower designs will be required to meet the purpose for the site.
	Full RMA and landowner consents (for additional carousels, extra height, etc) should be obtained before the build commences, even though those developments might take place later.	Towers will be designed for the expected co-location demand. This is designed to incentivise early use of the co-location. The challenges of obtaining consent / authorisation for extensions that may never be used, as identified by 2degrees at para 2.23 of its submission, will significantly increase the risks of both costs overruns and delays.
	Vodafone should undertake to use best endeavours to obtain full landowner and RMA consents.	Provisions to this effect have been integrated into the document.
	Enhanced involvement of the Commerce Commission e.g. to monitor whether Vodafone has taken adequate steps to obtain consent / authorisation.	MED will monitor compliance with contractual matters relating to the tower construction. The Commerce Commission will monitor non-discrimination undertakings and the Standard Terms Determination for Co-Location on Cellular Mobile Transmission Sites.
2degrees	Vodafone will gain a competitive uplift in the broader mobile market. MED does not appear to have taken this into account.	Improving mobile coverage for rural New Zealanders is a good thing. 2degrees will

		have access to increased coverage under its national roaming agreement with Vodafone. It will also have access to low co-location service prices on RBI funded towers. 2degrees had the opportunity to bid for the RBI.
	Co-location is expensive, while the population coverage at each site will be very low. In this context, the case for network entry by additional [mobile] players is "marginal at best".	Co-location on new towers will be low cost and encourage other access seekers to provide wireless services. The financial viability of a rural presence cannot be measured by rural population alone. Rural presence helps retain high-ARPU urban customers who may occasionally enter rural zones.
	It remains unlikely that a new entrant like 2degrees would commit significant capital resources to co-location in rural areas in advance of completing its core network roll-out.	The RBI co-location arrangements will promote competition. This could encourage 2degrees to accelerate the roll out of its core network. This is ultimately a 2degrees commercial decision.
	Recommends that MED impose antenna-sharing and national roaming obligations on Vodafone, as these will: - lower barriers to entry by access seekers; and - minimise RMA consent risks.	Mobile cellular services are not the main focus of the RBI. In addition, national roaming is already a 'specified service' under the Telecommunications Act and the Commerce Commission is free to re-investigate this market at any time. 2degrees recently requested that the Commission not investigate the national roaming market. Antennae sharing poses technical challenges including interference and reduction of the power available to each operator with consequential impact on coverage and quality of service. MED is not aware of antennae sharing having been widely mandated abroad. Operators remain free to explore both these options on a commercial basis

	Adjustments need to be made to the terms of the mobile co-location STD, given we are dealing with publicly-funded infrastructure. There should be consultation on those adjustments.	Provisions have been introduced to guard against anti-competitive use of reserved space.
	Seeks assurance that the co-location non-discrimination provisions have been drafted with the assistance of an international co-location expert independent of Vodafone, Telecom and MED.	MED consulted with the Commerce Commission and industry to develop the undertakings.
	Further information must be provided on the 380 existing Vodafone towers that will be upgraded.	Vodafone will not be using any RBI funding in its upgrade of its 380 existing rural cellsites. It is therefore not appropriate for the Crown to mandate additional co-location requirements at those sites, on top of the current mobile co-location STD.
	MED should explore with Vodafone how co-location will occur when RMA consent for "co-location-ready" towers is not granted.	Provisions to this effect have been introduced into the agreement with Vodafone.
	It is not clear that the tower characteristics set out in the consultation document will enable the installation of LTE equipment by all three mobile cellular operators.	Provision has been made for the towers to be strong enough to hold a 5 metre height extension.
	MED must negotiate obligations on Vodafone to ensure that access seekers will not be at a competitive disadvantage due to the location of their equipment on the tower.	MED has negotiated that, where a tower is less than 25 metres, a third player (such as 2degrees) will have space on the same level as Vodafone.
	Late access seekers should not incur extra costs for such items as a second headframe or a mast extension.	There is a limited pool of RBI funds and it will not be possible for MED to fund ongoing capital expenditure on towers.
	The "collaborative" process in the lead-up to building a cellsite appears to be a one-way notice regime. There must be guarantees that access-seekers requirements are taken into account.	MED is confident that it has negotiated a sufficiently collaborative regime. Vodafone is required to consult with access seekers who participate in the build of the new towers.
	If Vodafone are only required to provide co-location services "after" new towers are built, there will be a material delay while access seekers navigate the co-location process. Vodafone will thus gain a first-mover advantage.	Co-location is built into the tower design process. Provisions to avoid the scenario described have been integrated into the non-discrimination obligations.
	Recommends that co-location be moved from a specified to a designated service under the Telecommunications Act, so that pricing is regulated	This is inconsistent with 2degrees' submissions on UFB, where 2degrees argues that legislation should not replace the

		Commerce Commission. The Commerce Commission has the ability to recommend price regulation for co-location.
	If co-location is not designated, then: - an objective and auditable price calculation is required, with Vodafone required to disclose how public funds have been spent and its actual costs of providing the co-location service; and - when determining “cost”, the depreciated value of Vodafone’s existing towers, and the intangible benefits to Vodafone from the RBI, should be taken into account	Co-location pricing will be based on a cost recovery basis. Depreciation expenses from grant funded infrastructure will not be allowed to be recovered by Vodafone.